

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION

MARTHA KINARD, Regional Director of the)	
Sixteenth Region of the National Labor)	
Relations Board,)	
for and on behalf of the)	
NATIONAL LABOR RELATIONS BOARD,)	Civil Action No. 4:16-cv-952-O
)	
Petitioner,)	
v.)	
)	
DISH NETWORK COMPANY,)	
)	
Respondent.)	

JOINT STATUS REPORT

On December 13, 2016, the Court found that a hearing in this matter is required and ordered that Petitioner Martha Kinard (“Petitioner” or “the NLRB”) and Respondent DISH Network L.L.C. (“Respondent” or “DISH,” incorrectly captioned as “DISH Network Company”) (collectively “the Parties”) file a joint status report, describing the testimony and other evidence they anticipate presenting during the hearing, and providing an estimate of how much time each side will need to present its case.

I. The Scope of the Hearing

The Parties present the following list of witnesses and exhibits to the Court in light of the Petitioner’s unopposed motion to try this case on the basis of the record developed before National Labor Relations Board Administrative Law Judge Ringler, supplemented as necessary with evidence bearing on the issue of the equitable necessity of injunctive relief in this case (*i.e.*, whether injunctive relief is “just and proper”) (Doc. No. 5). The “reasonable cause” element of the two-part test applicable to this case has been thoroughly addressed in the administrative record. Therefore, the Parties recommend that the evidence to be presented at the hearing focus

on the “just and proper” element. If this recommendation is adopted, the Parties anticipate that the hearing would last about two days. The Parties jointly request that if the Court desires additional evidence regarding reasonable cause, they be provided an opportunity to supplement this list.

II. Petitioner’s Anticipated Testimony and Evidence

Through the witnesses listed below, Petitioner intends to show that Respondent’s actions have resulted in a continuous loss of Union-supporting employees, including a key supporter; that more Union-supporting employees and key employees have concrete plans to leave the Employer soon; and that many employees who leave/have left will not return by the time of an eventual final Board Order. Additionally, Petitioner intends to show that Respondent’s actions have frustrated support for the Union among current employees and have served to alienate new employees from the Union. Together, Petitioner asserts that this evidence will show that, absent the granting of the requested injunctive relief, at the time of a final Board Order, the Union will be in the extremely weak position of representing a Unit that has been drained of supporters and the Board Order will be meaningless.

Petitioner estimates that the presentation of its witnesses and other evidence should last no more than one day. Petitioner intends to call roughly ten live witnesses (Nos. 1-10 below). With respect to twelve other witnesses (Nos. 11 – 22), the point of their testimony is simple: whether they intend to return to work if offered reinstatement at the QPC wage rate. Petitioner intends to prepare and submit limited affidavits in lieu of live testimony for witnesses Nos. 11-22.

No.	Name	Title	Subject of Expected Testimony
1.	Jason Morris	Current Farmers	Mr. Morris is the leader for the Union at Farmers Branch. He will testify that he intends to quit and possibly move out

No.	Name	Title	Subject of Expected Testimony
		Branch Technician	of the State because he cannot afford to live on his current wages at Dish. Morris will also testify about the intentions of other employees to quit.
2.	Carl Austin Miles	Current North Richland Hills Technician	Mr. Miles will testify about the effect of Manager Waeland Thomas' instruction to employees not to speak to new employees about the Union. Mr. Miles will also testify about his own intentions to quit because he cannot afford to live on his current wages at Dish. Miles will also testify about support for the Union and the intentions of other employees to quit.
3.	Sylvia Ramos	Assistant Vice President of the CWA District 6	Ms. Ramos will testify regarding the effect of the wage cuts on Union support and regarding her ability to negotiate on behalf of a decimated Unit.
4.	Daniel Jensen	Current Farmers Branch Technician	Mr. Jensen will testify that he intends to quit and move out of the State because he cannot afford to live on his current wages at Dish. Mr. Jensen will also testify about employee dissatisfaction with the Union that has resulted from the wage cut.
5.	David Teague	Current Farmers Branch Technician	Mr. Teague will testify that he is already training for a truck driving position at another company and intends to quit when he has completed his training and when the trucking company opens up its next round of hiring because he cannot afford to live on his current wages at Dish.
6.	Sergio Villegas	Current North Richland Hills Technician	Mr. Villegas will testify that he is remaining with Dish until his retirement plan vests in February 2017 at which point he intends to quit because he cannot afford to live on his current wages at Dish. Mr. Villegas will also testify with respect to the effect of the statement of Waeland Thomas.
7.	Chris Moss	Former North Richland Hills Technician	Mr. Moss was the leader of the Union at North Richland Hills until he quit in November 2016. Mr. Moss will testify that he quit because of the reduction in wages.
8.	Josh Moss	Former North Richland	Mr. Moss quit working for Dish in November 2016. He will testify that he quit because of the reduction in wages.

No.	Name	Title	Subject of Expected Testimony
		Hills Technician	
9.	Michael Camp	Former North Richland Hills Technician	Mr. Camp quit working for Dish in December 2016. He will testify that he quit because of the reduction in wages and because of the change in healthcare benefits.
10.	Bryce Bengé	Former North Richland Hills Technician	Mr. Bengé will testify that currently he is not interested in returning to Dish Network.
11.	Robert Seth MacDonald	Former North Richland Hills Technician	Mr. MacDonald will testify that currently he would accept an offer to return to employment at Dish Network if the QPC wage rate was restored.
12.	John Carson	Former North Richland Hills Technician	Mr. Carson will testify that currently he would accept an offer to return to employment at Dish Network if the QPC wage rate was restored.
13.	Christopher Little	Former North Richland Hills Technician	Mr. Little will testify that currently he would accept an offer to return to employment at Dish Network if the QPC wage rate was restored.
14.	David Dingle	Former North Richland Hills Technician	Mr. Dingle will testify that currently he is interested in returning to work at Dish Network.
15.	John Burns	Former North Richland Hills Technician	Mr. Burns will testify that currently he would accept an offer to return to employment at Dish Network if the QPC wage rate was restored.
16.	Marcus Tillman	Former Farmers Branch Technician	Mr. Tillman will testify that currently he would accept an offer to return to employment at Dish Network if the QPC wage rate was restored.
17.	Severo Hernandez	Former North Richland Hills	Mr. Hernandez will testify that currently he would accept an offer to return to employment at Dish Network if the QPC wage rate was restored.

No.	Name	Title	Subject of Expected Testimony
		Technician	
18.	Aaron Mason	Former North Richland Hills Technician	Mr. Mason will testify that he is not interested in returning to Dish Network even if the QPC wage rate was restored.
19.	Aaron Kubesch	Former North Richland Hills Technician	Mr. Kubesch will testify that he is not interested in returning to Dish Network even if the QPC wage rate was restored.
20.	Salvador Bernadino	Former North Richland Hills Technician	Mr. Bernadino will testify that he is not interested in returning to Dish Network even if the QPC wage rate was restored.
21.	Scott Dehart	Former North Richland Hills Technician	Mr. Dehart will testify that he is not interested in returning to Dish Network even if the QPC wage rate was restored.
22.	Kenneth Blake Daniel	Former North Richland Hills Technician	Mr. Daniel lives out of the State, his affidavit will demonstrate that he is not interested in returning to Dish Network.

Petitioner intends to enter the following exhibits:

No.	Description
1.	Employee Rosters showing employment at the Unit facilities on March 1, 2016 and December 9, 2016
2.	Documents showing the discrepancy between pay for Unit employees and nearby offices
3.	A text message sent by technician Daniel Jensen to a group of Farmers Branch technicians on November 15, 2016 showing diminution in support for the Union

III. Respondent's Anticipated Testimony and Evidence

Respondent proffers witnesses to rebut Petitioner's contentions that the "extraordinary remedy" sought by the NLRB is just and proper. Respondent anticipates that, including cross

examination, it will take one day to present its case. Respondent hopes that it will not be necessary to call all of the witnesses listed below; their necessity will depend largely on the testimony of Petitioner's witnesses.

Respondent also reserves the right to request the Court provide Respondent an opportunity to cross examine the witnesses whose testimony Petitioner plans to introduce through affidavits (*i.e.*, Petitioner Witnesses 11-22). Respondent will be in a better position to assess the need for cross examination after Petitioner produces to Respondent a copy of the affidavits.

No.	Name	Title	Subject of Expected Testimony
1.	Monty Beckham	Regional Director of Operations for the South Central Region, DISH	DISH's pay systems and market wage rates; DISH's retention and attrition rates in the region as compared to retention and attrition at the offices at issue; hiring at the offices; and plans for the offices.
2.	Waeland Thomas	Operations Manager, DISH	Response to allegations of Mr. Thomas's instructions to employees regarding union discussions; from field perspective, testify regarding staffing and current operations at DISH's North Richland Hills office .
3.	Thomas Nicholas	Region Manager, DISH	From operational perspective, testify regarding attrition and recent hires at DISH's North Richland Hills office; plans related to future hiring; long-term plans for the office.
4.	Keith Barton	Region Manager, DISH	From operational perspective, testify regarding attrition and recent hires at DISH's Farmers Branch office; plans related to future hiring; long-term plans for the office.
5.	Eric King	Operations Manager, DISH	From field perspective, testify regarding staffing and current operations at DISH's Farmers Branch office.
6.	Sylvia Ramos	Assistant Vice President, District 6, CWA	The CWA's recent communications to its bargaining unit members; responses from bargaining unit members.
7.	Tony Shaffer	Staff Representative, CWA	The CWA's recent communications to its bargaining unit members; responses from bargaining unit members.

No.	Name	Title	Subject of Expected Testimony
8.	Bargaining unit member to be determined		The CWA's recent communications to its bargaining unit members; responses from bargaining unit members.
9.	Witness to be determined		Reasonableness of compensation currently paid to bargaining unit employees in market.

Respondent intends to enter the following exhibits:

No.	Description
1.	Attrition in Region and Comparison to Unionized Offices
2.	Wages in Region and Comparison to Unionized Offices
3.	Recent Hires and Staffing Goals

IV. Discovery

Respondent intends to serve limited written discovery on an expedited basis, to be served by Wednesday, December 21, 2016. Respondent requests that responses to its discovery requests be served by Petitioner within 14 days, by January 4, 2017, or within such time as the Court deems proper. Petitioner is unaware of the nature of the discovery Respondent intends to serve and may challenge it if appropriate.

V. Scheduling

Counsel for Petitioner will be out of town from December 23, 2016 through January 4, 2017, but has no scheduling conflicts thereafter.

Counsel for Respondent does not anticipate a scheduling conflict.

Respectfully submitted,

s/
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